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# Supreme Court of the United States.

OCTOBER TERM, 1902.
No. 92.

JAMES H. EASTON,
*Plaintiff in Error,*

*against*

THE STATE OF IOWA,
*Defendant in Error.*

## IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

## SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

CHARLES P. BROWN,
JOHN I. CRAWFORD,
*Counsel for Plaintiff in Error.*

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THE STATE OF IOWA,
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In Error to the Supreme Court of the State of Iowa.

## Supplemental Brief for Plaintiff in Error.

The plaintiff in error was convicted in the District Court of Iowa in and for Fayette County upon an indictment which charged him with the offence of receiving, as President of the First National Bank of Decorah, a deposit of $100, the said bank being at the time of such deposit insolvent, and such insolvency being known to the plaintiff in error.

The conviction was had under sections 1884 and 1885 of the Code of Iowa (1897), which sections are set forth in full in the main brief of Messrs. Reed, page 2.

The judgment of conviction having been affirmed by the Supreme Court of Iowa, the case has been

brought into this Court upon a writ of error, and the plaintiff in error prays that the judgment be reversed.

The statute of Iowa under which the indictment and conviction were had provides in substance that no bank or person engaged in the banking business shall, when insolvent, accept or receive on deposit any money, bank bills, United States Treasury notes, etc., etc, and that if any such bank or person shall receive or accept on deposit any such deposit as aforesaid when insolvent, any officer knowing of such insolvency who shall knowingly receive or accept * * * any such deposit * * * shall be guilty of a felony and upon conviction shall be punished, etc., etc.

The main contention of the plaintiff in error is that the statute of Iowa upon which the indictment and conviction rests, if construed and held to apply to national banks and the officers thereof, is in conflict with the Constitution of the United States and the Act of Congress known as the National Banking Act, and is, so far as it is applicable to national banks, void. That the act of receiving a deposit of money alleged in the indictment to have been received by the plaintiff in error was an act authorized to be done by him by the law of Congress, and was, therefore, a lawful act, and that consequently the District Court of Iowa had no jurisdiction to inquire into or to try and adjudge the plaintiff in error to be guilty of a crime in receiving such deposit.

This question was raised by the plaintiff in error by appropriate exceptions taken to the rulings of the Trial Court at different stages of the trial, all of which are fully set forth in the transcript of record, pages 2, 3, 4, 29–31, and are referred to in detail upon the main brief of Messrs. Reed, at pages 3 and 4.

## Points and argument.

### I.

**It may be assumed for the purposes of this argument, as contended by the learned Attorney General, that,**

Upon the construction of the statue under which the plaintiff in error was indicted and convicted, this Court will follow the decision of the Supreme Court of Iowa, and treat the law as one intended by the legislature to be applicable to national banks and the officers thereof. Upon that assumption the the question is presented whether the statute is valid in so far as it is made applicable to national banks, and the officers thereof, conducting and transacting the banking business under the Law of Congress.

### II.

**National banks are agencies of the National Government created by Congress to enable it to exercise and conduct its fiscal powers and operations. They are instruments of the Federal Government created for public purposes and as such necessarily subject to the paramount authority of the United States.**

Congress is the sole judge of the necessity for the incorporation of such institutions and of all matters pertaining to the extent of their powers, the manner of conducting and transacting business and the regulation thereof.

McCulloch *v.* Maryland, 4 Wheaton, 425.

Osborn *v.* U. S. Bank, 9 Wheaton, 738.
Legal Tender Cases, 110 U. S. Rep., 421.

## III.

**The necessity for the incorporation and regulation of such institution theretofore being a matter solely within the jurisdiction of Congress, the whole subject is a matter out of the plane of State control and jurisdiction. The States cannot legislate upon such a matter, and statutes enacted by State legislatures cannot, by judicial interpretation and construction, be made applicable to such institutions.**

It is not contended that national banks in the transaction of their business are not, in many respects, subject to the laws of the State within which they are located. It is conceded that they are. In the acquisition and transfer of property, in the making and interpretation of contracts, in the right to sue and the liability to be sued, they are in the main governed by and subject to State laws. Upon all such matters they are subject to State laws the same as all other persons residing in or transacting business within the State.

But as instrumentalities and agencies of the Federal Government, they are not subject to the jurisdiction of the State, but solely to the jurisdiction of Congress and a State law which incapacitates them from discharging such duties is unconstitutional.

An attempt of a State to define the duties of national banks or control the conduct of their officers is absolutely void when such attempted

exercise of authority conflicts with the law of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of the Federal Government to discharge the duties for the purpose of which they were created.

Davis *vs.* Elmira Savings Bank, 161 U. S., 275, 283.

## IV.

**The rules of law being, therefore, as stated in the foregoing propositions, the question is presented: When and to what extent is a National Bank to be deemed an instrument of the Federal Government.**

We confidently contend that a bank is an instrument or agency of the Federal Government in everything that it does as a bank. It is the creation of Congress for a federal purpose, and it is endowed with its powers because such powers were deemed essential by Congress to perform the duties for the purposes of which it was created. The necessity for its creation and the powers which should be conferred upon it were matters solely within the jurisdiction of Congress.

As said by Judge Marshall in Osborn *vs.* the Bank (*supra*):

> "The operations of the bank are believed not only to yield the compensation for its services to the government, but to be essential to the performance of those services. Those operations give its value to the currency in which all the transactions of the goverment are conducted. They are, therefore, inseparably connected with those transactions and are, therefore, of the very essence of its character, as a national instrument. The business of the bank constitutes its capacity to perform its functions

> as an instrument for the money transactions of the government. Its corporate character is merely an incident which enables it to transact the business more beneficially."

No distinction can, therefore, be drawn between the bank as an agency of the Government and as a corporation trading with individuals for its own benefit. Any such claim was absolutely overruled in the cases of McCulloch *vs.* Maryland and Osborn *vs.* The Bank (*supra*). In the latter case Judge MARSHALL said:

> "The bank is not considered as a private corporation whose principal object is individual trade and individual profit; but as a public corporation created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or persons having no political connection with the Government is admitted; but the bank is not such an individual or company. It was not created for its own sake or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the Court in the case of McCulloch *vs.* Maryland is founded on, and sustained by, the idea that the bank is an instrument which is necessary and proper for carrying into effect the powers vested in the Government of the United States."

It follows from these rules that in treating the national bank as a fiscal agency of the Federal government it is to be regarded as such in everything that it does as a bank. In other words, in the transaction and conduct of the banking business, it is acting not as a private individual but as a federal agency.

## V.

**The National Banking Act does not prohibit or forbid the receipt of deposits by a bank when insolvent at any time before it is taken out of the control of its officers by the Comptroller of the Currency, acting under the provisions of the National Banking Act.**

This general proposition is conceded in the opinion of the Supreme Court of Iowa in State *vs.* Fields, 98 Iowa, 74.

It is said by Judge ROTHROCK in the course of his opinion:

> "It is conceded that there is no act of Congress prohibiting the receipt of deposits at any time before an insolvent bank is taken out of the control of its officers under the provisions of the federal statute."

Reference, however, is appropriate to the provisions of the banking act to show the power granted to national banks, and the power of control over such banks which Congress has vested in the Comptroller of the Currency.

The National Banking Act is contained in sections 5133 to 5243 of the Revised Statutes.

It is provided therein that banks can commence business when the Comptroller of the Currency shall issue his certificate that the association has complied with all the provisions of law required to be complied with (§§ 5168, 5169).

They are to be managed by a Board of Directors elected by stockholders (§ 5145).

They are authorized—To make contracts—To prescribe by their Boards of Directors by laws regulating the manner in which their general business shall be conducted and the privileges granted it exercised and enjoyed—To exercise by its Board of

Directors or duly authorized officers or agents subject to law all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange or other evidences of debt by *receiving deposits*;—by buying and selling exchange, coin and bullion—by loaning money on personal security, and by obtaining, issuing and circulating notes (§ 5136).

They are authorized to purchase, hold and convey real estate (§ 5137); to be depositories of public money (§ 5153); to receive and issue circulating notes (§§ 5157 to 5189), and they are required to have and keep on hand at all times, in lawful money of the United States, a certain percentage of the aggregate amount of notes in circulation and deposits, the percentage depending upon the location of the bank (§ 5191); to make reports at stated intervals to the Comptroller of the Currency of their resources and liabilities (§ 5211), to make semi-annual reports of the deposits, etc., to the Treasurer of the United States (§ 5215), and they are prohibited from being indebted or in any way liable to an amount exceeding the amount of capital stock paid in and remaining undiminished, except upon demands of the following nature, First, notes of circulation—Second, moneys deposited with or collected by the association—Third, bills of exchange or drafts drawn against money on deposit to the credit of the association or due thereto—Fourth, liabilities to stockholders for dividends and reserve profits (§ 5202).

The Comptroller of the Currency is vested with power to require any bank when its money reserve falls below the amount required, to make the same good within thirty days, or in default thereof to appoint, with the concurrence of the Secretary of the Treasury, a receiver to wind up the business of the bank (§§ 5191, 5234); to re-

quire the capital stock to be made good by payment within three months where the same is impaired, and in default thereof, to appoint a receiver to close the business of the bank (§ 5205) and to appoint receivers to wind up the business of the banks when they are insolvent (§ 5232).

Power is given to the Comptroller of the Currency, with the approval of the Secretary of the Treasuary, to appoint examiners, at any time, who shall have power to make examinations into all the affairs of the banks (§ 5240).

Severe penalties for violation of the banking law are prescribed by § 5209, and provision is made for the forfeiture of the charter in § 5239, and by § 5241 it is provided that no association shall be subject to any other visitorial powers than such as are authorized by the Banking Act or vested in the courts of justice.

The sections referred to, we respectfully submit, embrace the whole subject of banking. They provide for the organization of the banks, for their government, enumerate their powers and regulate the transaction of the business. Power is delegated to the Comptroller of the Currency of the most ample character, and control of the association is vested in him with the power in the exercise of his judgment and discretion, subject to the approval of the Secretary of the Treasury to appoint receivers and close up the business of the associations.

Section 5136 expressly authorizes banks to receive deposits, and in no provision of the law is that power limited or restricted, while the bank is permitted by the Comptroller of the Currency to carry on the business of a bank.

The only instance in which a bank is prohibited from carrying on the business in the manner prescribed by Section 5136 before the Comptroller has, through a receiver, taken possession of the bank is

when the default in the payment of its circulating notes has been ascertained by the Comptroller (§5228), and the clear implication from Section 5202 is that although insolvent, a bank may receive deposits until the Comptroller shall appoint a receiver to close up its affairs.

McDonald *vs.* Chemical Nat. Bank, 174 U. S., 610.

A bank may be said to be insolvent whenever its capital stock has become impaired. The National Bank Act, however, does not require the officers to cease receiving deposits for this reason; but gives the bank three months in which to make good the impairment by assessment upon the shareholders. (Rev. Stat. U. S., 5205). Hence what is expressly permitted under the Federal statute might constitute a crime under the State statute; and there might plainly be a conflict between the laws of the two jurisdictions.

## VI.

**A State has no power to legislate in reference to National Banks, or to alter or supplement any of the provisions of the National Banking Act.**

This proposition would seem to be a plain deduction from the principles decided by this Court in reference to such institutions. The government of the United States is created for one purpose, the State governments for another. Each possesses its own powers, and there is no more authority for the States to interfere with the regulation of an agency or instrument of the Federal Goverment than for the latter to inter-

fere with and regulate a purely State institution. A State cannot arrest the operation of a law of Congress, and Congress cannot arrest the operation of the law of the State. Within their own jurisdiction each is separate and independent of the other.

The proposition, moreover, has direct support in the decisions of this Court.

In the United States *vs.* Fisher, 2 Cranch, 258, in deciding the question as to the power of Congress to enact that debts due to the United States should have priority of payment out of the estate of an insolvent and expounding the clause of the Constitution giving power to Congress to make all necessary and proper laws, Judge MARSHALL said :

" In construing the clause it would be incorrect and would produce endless difficulties if the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specific power. Where various systems might be adopted for that purpose, it might be said with respect to each that it was not necessary because the end might be obtained by other means. Congress must possess the choice of means and must be empowered to use by any means which are in fact conducive to the exercise of a power granted by the Constitution."

In *McCulloch* vs. *Maryland* he again said upon the same subject :

> " We admit, as all must admit, that the powers of the government are limited and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national Legislature that discretion with respect to the means by which the power it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the

manner most beneficial to the people. Let the end be legitimate. Let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end which are not prohibited but consist with the letter and the spirit are constitutional."

In Farmers' National Bank *vs.* Dearing, 91 U. S., 29, it was said:

> "The States can exercise no control over National banks nor in anywise affect their operation, except so far as Congress may see proper to permit; everything beyond this is an abuse, because it is the usurpation of power which a single State cannot give. The State has no power by taxation or otherwise to burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the general government."

In Prigg *vs.* Pennsylvania, 16 Peters, 539, it is said:

> "If Congress has a constitutional power to regulate a particular subject, and does regulate it in a given manner and in a certain form, it cannot be that State Legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it."

In Hall *vs.* DeCuer, 95 U. S., 499, it is said:

> "The legislation of Congress in what it does prescribe manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence

as to what it does not do is as expressive of what its intention is as the direct provisions made by it."

In Leisy *vs.* Hardin, 135 U. S., 100, Chief Justice FULLER said:

> "Where the subject matter requires a uniform system as between the States, the power controlling it is vested exclusively in Congress, and cannot be encroached upon by the States."

## VII.

**The Statute of Iowa, pursuant to which the plaintiff in error was indicted and convicted, violates the fundamental propositions stated above. It attempts to supplement the National Banking Act and to regulate and control and limit the business of national banks within the State of Iowa, and directly invades the jurisdiction conferred by Congress upon the Secretary of the Treasury and the Comptroller of the Currency.**

The National Banking Act does not forbid the receipt of deposits when a bank is insolvent, but it vests the Comptroller of the Currency with power in the exercise of his judgment and discretion to interfere, and by the appointment of a receiver arrest the operations of the bank under such circumstances. The law of Iowa expressly provides that "no bank shall, when insolvent, accept or receive a deposit."

The distinction between a valid and invalid State law in its application to national banks is well illustrated in the cases of Davis *vs.* Elmira Savings Bank (*supra*) and McClennan *vs.* Chipman, 164 U. S., 356.

In the latter case a law of Massachusetts was

held to be valid for the reason that it in effect impressed a lien in favor of creditors upon the property of insolvent debtors in that State, owned by them within six months prior to the filing of a petition to declare such person insolvent, and incapacitated the insolvent debtor from displacing such lien by any conveyance or transfer of his property within the time named, with intent to prefer one creditor over the other.

This law was held to be valid for the reason that it acted solely upon the property and persons within the jurisdiction of the State.

In Davis *vs.* the Savings Bank a law of the State of New York which attempted to give a savings bank organized under the laws of that State a preference in the assets of an insolvent national bank, was held to be invalid, for the reason that it was repugnant to the National Banking Act which requires the assets of an insolvent national bank to be ratably distributed among its creditors. The State law related to national banks and to the duty on the part of the officers thereof in case of insolvency. Hence this Court held that the State law was inoperative because it overrode the plain text of the National Banking Act.

The principle of this decision is directly applicable to the case at bar for the reason that the law of Iowa, under which the plaintiff was indicted and convicted, in prohibiting a national bank from accepting a deposit when insolvent, overides directly the National Banking Act which permits a national bank to receive deposits as long as the Comptroller of the Currency and the Secretary of the Treasury in the exercise of their judgment deem it wise so to do.

The argument of the learned Attorney-General upon the subject of fraudulent banking and the evils of permitting a bank to receive deposits when insolvent needs no serious consideration. The

question before the Court is whether the Legislature of Iowa possessed the power to enact the statute under which the plaintiff in error was convicted. If the State had no such power the law must be held to be void, however good and beneficial it may be.

Congress being the sole judge of the necessity for the creation of national banks was also the sole judge as to the extent of the powers with which they should be endowed. Whether they should be prohibited from transacting business absolutely or to a limited extent, or not at all, when insolvent was a question of policy which Congress alone could decide. Congress has dealt with the subject by vesting control of such institutions in the Secretary of the Treasury and the Comptroller of the Currency and endowing such officers with power to arrest the operations of a bank and appoint a receiver thereof when insolvent, or when it refuses to make good an impairment of capital or its money reserve. It has vested these officers with full and complete power through the reports required to be made by the banks and by the power of visitation to ascertain at all times the conditions of the banks. It has not, however, prohibited, as the law of Iowa prohibits, the transaction of the business of banking when the institution is insolvent, but has left the officers named to deal with such conditions as they arise. That it is not the policy of the Federal government to arrest the business of banks and enforce liquidation for all violations of the Banking Act is well known.

In times of financial distress the Treasury Department has frequently lent its aid to assist banks to tide them over their embarrassments until better business conditions prevail. During the panic of 1893 it is a matter of history that the reserves in the banks of New York fell many millions below the legal requirements, and within the

past year the same conditions prevailed to a lesser extent.

To continue business when insolvent is not necessarily a fraud or a crime on the part of a bank or an individual engaged in business.

In McDonald *vs.* Chemical National Bank, 174 U. S., 610, this Court recognized the right of a national bank to continue to transact business until closed by the Comptroller of the Currency, and in that case Mr. Justice SHIRAS said:

> "It is a matter of common knowledge that banks and other corporations continue in many instances to do their regular and ordinary business for long periods, though in a condition of actual insolvency as disclosed by subsequent events. There is often a hope that, if only the credit of the bank can be kept up by continuing its ordinary business, and by avoiding any act of insolvency, affairs may take a favorable turn, and thus suspension of payment and business be avoided."

The case of Fuzz *vs.* Spaunhorst, 67 Mo., 256, contains remarks of the same character.

The receipt of deposits in the regular way is necessary to the continuance of the bank's business; and a refusal to receive deposits would bring about an immediate suspension. If, therefore, the State Statute is valid, it has the effect of forcing the bank to close; and so the question whether it shall continue in business is determined by a State law.

The question of the solvency or insolvency of a bank is one of fact, dependent upon many subsidiary facts. As the bank's assets consist largely of commercial paper and securities, the question of the value of such paper and securities must largely enter into the consideration and determination of the matter. The Federal statute commits the determination of this question to the Comptroller of the Currency, who, from his knowledge of the banking

business and his superior attainments and experience, is the person best qualified to pass upon it; but the State statutes leaves the decision to a local jury, ignorant perhaps of business methods, and possibly influenced by prejudice and ill-will. Now, the Comptroller might have one opinion upon the matter and a local jury might have a very different opinion, and hence it is plain that there might be a clash between the Federal and State authority. The Comptroller of the Currency, in the exercise of his best judgment, might allow the bank to remain open, but the officers would do so at the peril of having some local jury afterwards decide that their action in so doing was a crime.

Whether or not the act denounced by the Iowa statute shall be made a crime is a question of policy; and as to the wisdom of such legislation, there may be, and, indeed, there is, a difference of opinion. The receipt of a deposit when a bank is insolvent is not a crime at common law, nor is it made such by the legislatures of most of the States. The State of New York, for example, which includes the money center of the country has never adopted such a law. Statutes of this character are novel, and appear to be the outgrowth of conditions which prevailed in certain communities. Much could be urged against their utility and expediency. Conditions may arise where they would work great mischief. In financial panics, the safety or ruin of the business of the country will depend upon the judgment, foresight and courage of the bankers, and much must be left to their sagacity, honesty and good faith. One suspension will often cause others, and the closing of one bank may drag down a number. Many banks under such conditions may be for the time being insolvent; and yet it might be most unwise to close them. A statute which would require this to be done, without allowing the use of judgment or dis-

cretion, no matter how honestly exercised, might itself be the means of bringing about the very ruin it was intended to prevent. The question, being thus one of expediency and policy, it is, when applied to the national banks, to be determined by Congress, and not by the legislature of the States; and the omission of such provisoons from the National Bank Act is equivalent to an express declaration that Congress meant that such inflexible conditions should not be imposed upon the national banks. Congress adopted the wiser and more conservative course of leaving these matters to the sound discretion of the Comptroller of the Currency, and vesting him with plenary powers in such cases. With this policy the radical provisions of the Iowa Statute are plainly in conflict.

It is quite clear, we contend, that Congress has legislated upon the very subject dealt with by the Statute of Iowa. It has, however, dealt with it in a different spirit and more liberal manner. And the policy so expressed in the National Banking Act was one solely within the power of Congress to determine, and the State has no power to deal with it. The question is not one of concurrent jurisdiction. Concurrent power does not exist when in reference to the subject matter it is necessary to be exercised by Congress exclusively. The State can no more attempt to regulate the business of national banks than Congress could attempt to regulate the business of purely State institutions. If the power to legislate in reference to national banks exists in the State at all, it is of course unlimited.

If the law of Iowa can be upheld the State could prohibit a bank from continuing the transaction of business when the money reserve fell below the legal limit, or whenever there was a default in the payment of circulating notes or whenever the indebtedness of the bank should exceed the amount

of the capital stock paid in and undiminished. In other words, it would absolutely destroy the Congressional system and substitute a system of its own. The mere contemplation of such a condition of legislation and of conflict between Congress and the State Legislature must lead to the conclusion that the contention of the Attorney-General cannot be sustained.

The national banking system is one which necessarily needs to be uniform throughout all the States, and this necessarily requires exclusive control in Congress.

In Farmers' and Mechanics' National Bank *vs.* Dearing the Court gave effect to this consideration, and Justice Swayne said:

> "There was reason why the rate of interest should be governed by the law of the State where the bank is situated; but there is none why usury should be visited with the forfeiture of the entire debt in one State with no penal consequence whatever in another. This, we think, would be unreasonable and contrary to the manifest intent of Congress."

So, if the law of Iowa is sustained, there would be one policy as to national banks in one State and another in other States, and an act done in the transaction of the business of the bank which would be lawful in one State would be a felony and liable to be punished by imprisonment in another.

Another question would arise which is of the utmost importance in the business of banking, viz.: what constitutes an act of insolvency, or when could a bank be said to be insolvent?

Under the bankruptcy laws insolvency does not necessarily mean inability to pay debts. A person or a corporation under the bankruptcy laws may be insolvent when there is a failure to meet their obligations at maturity, but such obviously is not

the popular meaning of the term, and the statute which forbids a corporation or an individual from doing an act when insolvent would ordinarily mean when assets were insufficient to pay debts.

It is obvious from a consideration of the law of the State of Iowa that in a prosecution under the act there is no means of ascertaining whether a bank is insolvent except by proof to be made at a trial. The State has no power of visitation over such institutions for the reason that that power is expressly denied to it by the National Banking Act.

Neither could the State enforce a law of this character by excluding the national bank from doing business in the State. It is therefore quite plain that the punishment of offenses of this character under a State law would lead either to a rule that would have to be determined in each case as it arose, or else a rule that would be applied in each State. The result would be confusion, lack of uniformity in the business of banking and the punishment of acts in one State as crimes which would be lawful in other States.

The nature of the subject, the purpose to be served and the character of the corporations created necessarily require that the subject-matter of the banks should be dealt with alone by Congress.

It is a matter of common knowledge that the national banks have acted as agents of the government in the sale and distribution of bonds, in the receipt and deposit of revenue, as depositaries of public moneys and in the transmission of money and property from one part of the country to another, and in all the numerous relations and business which the government has with its fiscal agents. Any interference by the State with the system created would essentially impair, if it did not destroy, its vitality. Instead of having one system uniform throughout the nation, there would be as many different systems as there are States.

The nature of the banks and the purpose for which they are created are so closely connected with the money affairs of the government, with the collection, disposition and disbursement of its revenue that the State can no more be permitted to interfere with or regulate their business, than it could be permitted to impose upon them a tax.

The subject in its very nature is exclusive in the national government and excludes any interference by the States. If this proposition is not sound, then the national goverment is not supreme within its own sphere, but at any time may be embarrassed, crippled or obstructed in performing its most vital functions of government. For if the power exists in the States to control and regulate the business of national banks, such power is unlimited. Admit its existence and the whole system enacted by Congress is imperilled and may be overthrown.

The State was not permitted by the National Banking Act to enact the law in question as has been done in reference to taxing the shares in National Banking Association. The law does not operate upon the private property of the bank or its officers or touch the latter as individuals or as citizens of the State. It does not relate to the private property of any of the officers of the bank or affect their family or social relations.

Its manifest purpose is to operate upon the bank, and it seeks to enforce obedience by the bank to the mandate of the State by the imposition of severe penalties which it imposes upon the officers of the bank who, while acting as such, should disobey the law.

It is the business of the bank which the law seeks to regulate and control, and it touches the individual officers only as a means of enforcing obedience by the bank to the law. In other words, it restrains the bank from performing its functions

in that which is vital to the corporation and which was conferred upon it for the purpose of giving value to the bank as a government agent and also to the notes which it issues and circulates and in which the transactions of the government may be conducted. It seeks to curtail the business of the bank and punish its officers for doing an act which the law of Congress expressly permits them to do.

Judge Marshall has pointed out in McCulloch *vs.* Maryland that the corporate character of these institutions is merely an incident which enables them to perform their functions beneficially to the government; that if Congress had created a distinct officer under whom, by government agents, the same functions should have been performed as are now performed by the banks, and the emoluments and profits of the banking business drawn into the treasury, the right of State control would have been the same.

If such a system had been established it would not be seriously claimed that governmental agents charged with banking duties could be controlled in the transaction of their business by the State legislatures

The principle applied in Ohio *vs.* Thomas and *In re* Waite and other cases cited would have been directly applicable.

The banks in their legal relation to the States stand upon the same footing as such agent would have stood. The vital question which lies at the foundation of the claim of State control is as stated by Judge MARSHALL in Osborn *vs.* The Bank, viz.: Are the faculties conferred upon the bank so essential to the fiscal operations of the government as to authorize Congress to confer them, and as that learned Judge said: "Let this be admitted, and the question, does the right to preserve them exist, would always be answered in the affirmative."

The question is not as to the *quantum* of State

regulation, but whether there shall be any such regulation at all. This point was fully considered in *McCulloch* v. *Maryland*. There the Court refused to consider whether or not the amount of tax imposed would interfere with the operations of the bank, but treated the question as one of power only. Chief Justice MARSHALL said: "We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. The attempt to use it on the means employed by the government of the Union in pursuance of the Constitution, is itself an abuse, because it is the usurpation of a power which the people of a single State cannot give."

## VIII.

**This case falls within the principles laid down in McCulloch vs. Maryland, and in Osborn vs. United States Bank, that the States have no power to tax a national bank. It is also within the principle applied in Briggs vs. Penn., Ohio vs. Thomas, in re Waite and Cuningham vs. Nagle.**

In the preceding points, we have endeavored to show that the nature of the subject and the purpose intended to be served by the creation of National banks require that the subject matter of banking, so far as such institutions are concerned, should be within the exclusive jurisdiction of Congress.

Concurrent power over such institutions cannot exist. The matter is wholly without the plane of State jurisdiction. In this view, the case cannot

be distinguished in principle from the cases upon taxation.

The power of taxation is an incident of sovereignty and is co-extensive with that of which it is an incident. All subjects therefore over which the sovereign power of the State extends are in its discretion legitimate subjects of taxation, and this may be carried to any extent to which the government may choose to carry it. In its very nature it acknowledges no limit.

Cooley on Taxation, Chap. 1, p. 7.

No State can, however, impose taxes on persons, property or other subjects of taxation which are not within its jurisdiction. This is self-evident and has peculiar application to this country under the Federal Constitution which apportions the sovereign authority between the State and the nation and gives to each over certain subjects exclusive jurisdiction.

Whatever pertains to this exclusive jurisdiction is excluded from the taxing power of the other as much as if it were beyond its territorial limits. * * * It is the theory of our system of government that the State and the nation alike are to exercise their powers respectively in as full and ample a manner as the proper department of government shall determine to be needful and just, and as might be done by any other sovereignty whatever.

This theory, by necessary implication, excludes any interference by either the State or the nation with an independent exercise by the other of its constitutional power.

If it were otherwise neither government would be supreme within what has been set apart for its exclusive sphere; but on the other hand would be liable at any time to be crippled, embarrassed and perhaps wholly obstructed in its operation at the

will or caprice of those who for the time being wielded the authority of the other. * * *

It follows that the means and agencies provided and selected by the Federal Government as necessary and convenient to the exercise of its functions cannot be subject to the taxing power of the States, and so also the Federal Government is without power to tax the corresponding means and agenciesof the States.

Cooley on Taxation, Chap. 3, pp. 56–58.

Within the principles, stated by Judge Cooley, States cannot tax a bank chartered by Congress as a fiscal agent of the Government.

McCulloch *vs.* Maryland, 4 Wheaton, 316.

Osborn *vs.* The Bank of the U. S., 9 Wheaton, 738.

Nor the loans of the United States contracted under the power conferred by the Government to borrow money.

Weston *vs.* Charleston, 2 Peters, 499.

Bank of Commerce *vs.* N. Y., 2 Black, 620.

Nor the Revenue stamps issued by the United States.

Palfrey *vs.* Boston, 101 Mass., 329.

Nor the salary or emoluments of Federal officers.

Dobbins *vs.* Commissioners of Erie Co., 16 Peters, 435.

The Federal Government cannot tax the salaries of State officers.

Ward *vs.* Maryland, 12 Wall., 418–427.

Collector *vs.* Day, 11 Wall., 117.

Freedman *vs.* Sigel, 10 Blatch., 327.

Nor the judicial processes of State Courts.

Moore *vs.* Quirk, 105 Mass., 49.
Carpenter *vs.* Snelling, 97 Mass., 455.
People *vs.* Gates, 43 N. Y., 40.
Green *vs.* Holway, 101 Mass., 293.

Nor require stamps upon bonds of State officers.

State *vs.* Gaston, 32 Ind., 1.
See also Cooley on Constitutional Limitation, pages 481 to 484, and cases cited in notes.

The power of taxation possessed by the several States is not abridged by the Federal Constitution except in Article 1, Section 10, Subdivision 2, which has no relation to the subject under discussion.

It is settled law however, that the States have no power to tax a national bank, because such an institution is an agency of the Federal Government, and as such is excluded from the taxing power of the States in which it is located as fully as if it was located outside of the territorial limits of the State. By parity of reasoning, it must follow that so far as the power of the bank is concerned, the bank is outside of the State jurisdiction.

An act which Congress has authorized cannot be made a crime by a State Legislature. It is upon the latter principle that Rigg *v.* Pennsylvania was decided. The same rule was applied in Ohio *vs.* Thomas, *In re* Waite and Cuningham *vs.* Nagle, to protect an individual from indictment under State laws for acts done while acting under a law of Congress or by the direction of a Federal officer.

In Waite's case, Justice SHIRAS stated the rule as follows: "When a person seeks the benefit of the laws of the United States upon some matter wholly within Federal control * * * the test of the legality of the acts done by him is to be found in the laws of the United States."

This rule has full application to the plaintiff in error. The indictment charges an act done by him as President of the First National Bank of Decorah. It is for that act viz., the receiving and accepting of a deposit of money as President of such bank that he has been convicted. The legality of that act within the rule of the case cited, is to be determined by the laws of the United States and not by the law of Iowa. To paraphrase from Judge Shiras' opinion: "The State statutes do not furnish the test of the legality or criminality of the acts done by the President of a national bank when engaged in the transaction of the business of the bank of which he is the President."

It is said in the course of the opinion in State *vs.* Field, that when a man becomes an officer of the government, he does not cease to be subject to the laws of the State. That remark can have no application to the case at bar, for while the individual, is in a general way as a citizen of the State subject to all the laws of the State, what he does as an officer of the bank he does not by force or virtue of the State law but solely by force of the act of Congress. And in acting under the law of Congress he cannot be interfered with in any way, nor his duty prescribed or limited by the State law.

The purpose of Congress was very plainly to establish a uniform system for the control and government of the business of national banks. If the system is to be uniform, it must necessarily be free from any interference by the State legislature. If one State may impose one condition, another State may impose another, and the rule of uniformity will be absolutely destroyed.

The right of a bank to receive deposits is essential to enable it to continue business. As was pointed out by Judge Marshall in Osborn *vs.* The Bank: "Its trade and business is its sustenance and constitutes its capacity to perform its functions

as an instrument of the money transaction of the government." The subject matter was, therefore, one necessarily exclusive in Congress, and cannot be encroached upon by the States.

This clearly was well understood by Congress, and it conferred authority upon the banks to receive deposits to an unlimited amount, and it has not limited or restricted that power, except so far as it vested in the Comptroller of the Currency the power to ascertain and take notice of the conditions of the bank, and, when in his judgment and discretion it was necessary to interfere, to arrest their operations through the appointment of a receiver and close up their business.

## IX.

**The argument of the learned Attorney-General does not sustain the proposition for which he contends.**

His argument, briefly stated, is as follows: The certificate of the Comptroller of the Currency is issued to a bank because of its solvency and ability to carry on a legitimate banking business. No certificate would be issued to an insolvent bank. Therefore, whenever a bank becomes insolvent, its authority to continue business must necessarily cease. The fact that a bank holds the Comptrollers certificate cannot and does not authorize it to continue business or to receive deposits a single instant after it becomes insolvent. It is contended that these propositions are supported by the well recognized and sound principle of law that the receipt of a deposit of money by an insolvent bank is a fraud, and it is contended that no

act of Congress or certificate of Comptroller of the Currency can authorize a fraud.

This argument is sufficiently answered by reference to the sections of the National Banking Act, which do authorize a bank to carry on its business after it is insolvent, and does not prohibit the receipt of deposits when insolvent, but refers the subject of the control of such institutions, under all circumstances, to the Comptroller of the Currency and Secretary of the Treasury.

Admitting all that the Attorney-General says, we submit it has no relevancy to the question of the power of the State of Iowa to enact the statute in question. Everything that is said on pages fifteen and sixteen of the brief of the learned Attorney-General might well be addressed to Congress, but it has no force in determining the scope of the constitutional power of a State upon the subject under consideration. The argument of the learned Attorney-General all leads up to the conclusion stated upon page sixteen of his brief as follows:

> "The effect of the statute is to require of the officers of all banks within the State, a higher degree of diligence in the discharge of their duties. It gives to the general public greater confidence in the stability and solvency of national banks, and in the honesty and integrity of their managing officers. It enables them, better to accomplish the purposes and designs of the general government, and is an aid, rather than an impediment, to their utility and efficiency as agents and instrumentalities of the United States."

Assuming this to be true, is not Congress the sole judge of the policy to be adopted and enforced in cases of the insolvency of national banks?

Can a state legislature say: The scheme adopted and put in force by Congress in respect to national banks does not command public confidence; or that does not give to such institutions sufficient stability

or compel from the managing officers thereof the highest degree of honesty and integrity; we will, therefore, supplement this law and enable the National Government to better accomplish its purpose and design, and strengthen the integrity, and efficiency of the bank as agents and instruments for the United States? Such a question must necessarily receive a negative answer. The question which this Court is called upon to decide is one of jurisdiction. Not one iota of power can be added to the State's jurisdiction by considerations of the character referred to. If such a power exists in the States, it has no limits, except the discretion of the State legislature. If a State may forbid the receipt of a deposit, it may limit the issue of circulating notes, increase the requirements in relation to the lawful reserve of money, require security for the deposits of public funds, exercise the power of visitation, and in a word, enact and enforce any law which, in the judgment of the State legislature shall be deemed to be necessary to give greater stability to the banks, enforce honesty and integrity of the managing officers or command a larger degree of public confidence. In a word, the State may overthrow the national banking system established by Congress, and within its territorial limits substitute its own.

We all admit, of course, that the powers of the general Government are limited; that the States are sovereign powers and retain every sovereign right not delegated to the general Government. But the admission of such elementary propositions of constitutional law do not aid very much in the solution of the question presented upon this appeal, nor do we advance very much by referring the law to the police power, or by the inquiry whether Congress has occupied the field of legislation. The States can exercise no concurrent or independent power in reference to the management of such institutions, where from the nature of the institution or where the purpose to be served is one

which must be necessarily exercised by the National Government exclusively.

Gilman *v.* Philadelphia, 3 Wallace, 730.

This question is one which depends solely upon the construction of the Federal Constitution, and we cannot close our argument in a better way than by quoting again from Judge MARSHALL'S opinion in McCullough *v.* Maryland: "We think the sound construction of the Constitution must allow to the National Legislature that discretion with respect to the means by which the power it confers are to be carried into execution, which will enable that body to perform the highest duties assigned to it in the manner most beneficial to the public. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but, consistent with the letter and the spirit, are constitutional."

## X.

**It follows from the principles set forth in the preceding points that the judgment of the Supreme Court of Iowa should be reversed and the cause remanded to that Court with directions to reverse the judgment of conviction and discharge the plaintiff in error from the effect thereof.**

CHARLES F. BROWN,
JOHN J. CRAWFORD,
Counsel for Plaintiff in Error.